



City of Albuquerque

Legislative File Number O-06-20 (version 2)

CITY of ALBUQUERQUE SEVENTEENTH COUNCIL

Establishing The Albuquerque Minimum Wage Ordinance; Setting Minimum Wages For Employees; Creating Exemptions; Establishing Procedures For Enforcement.

CITY of ALBUQUERQUE SEVENTEENTH COUNCIL

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. SHORT TITLE. This ordinance may be cited as "The Albuquerque Minimum Wage Ordinance."

Section 2. DEFINITIONS.

CITY. The City of Albuquerque.

EMPLOYER. Any person, partnership, association, corporation, business trust, legal representative, or any other entity, or group of persons or entities, including corporate officers or executives, who is required to have a business license or business registration from the City of Albuquerque and who directly or indirectly or through an agent or any other person including, but not limited to, through a subsidiary or through the services of a temporary services agency, a staffing agency, a building services contractor, or any similar entity, employs or exercises control over the wages, hours or working conditions of any Employee. "Employer" shall include the City of Albuquerque.

EMPLOYEE. Any person who performs work for an Employer for monetary compensation for at least two (2) hours in a given week within the municipal limits of the City. "Employee" shall include persons who perform work for an

Employer on a full-time, part-time, seasonal, or temporary basis. Employee shall not include any person who is excluded from the definition of employee under NMSA §§ 50-4-21(c)(3)-(5), (7) of the New Mexico Minimum Wage Act, except that persons employed by the City of Albuquerque are employees. “Employee” shall not include interns working for an Employer for academic credit in connection with a course of study at an accredited school, college or university or employees working for an accredited school, college or university pursuant to a work-study program while attending that school, college or university. “Employee” shall not include any person who has received a certificate from the state labor commissioner pursuant to § 50-4-23 NMSA 1978 or § 50-4-21(C)(12) NMSA 1978.

MINIMUM WAGE, MINIMUM WAGE RATE. The minimum hourly rates of monetary compensation for work as specified in this ordinance.

TIP. A sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer. “Tip” shall include only tips actually received by an Employee as money belonging to him or her. Where Employees practice tip pooling or splitting, as where wait staff give a portion of their tips to bus persons, both the actual amounts retained by the waiters or waitresses and those given the bus persons shall be considered “Tips” of the individual Employee who retains them. A compulsory charge for service imposed on a customer by an Employer's establishment shall not be considered a “Tip” unless it is distributed by the Employer to its Employees.

TIPPED EMPLOYEE. Any Employee engaged in an occupation in which he or she customarily and regularly receives Tips from customers.

Section 3. MINIMUM WAGE.

(A) Minimum Wage Payment Required. Except as provided herein, Employers shall pay all Employees no less than the Minimum Wage for each hour worked within the municipal limits of the City. Tips or commissions received and retained by an employee shall be counted as wages and credited towards satisfaction of the minimum wage.

(B) Minimum Wage Rate. Beginning January 1, 2007, the Minimum Wage for Employees shall be an hourly rate of \$6.75. Beginning January 1, 2008, the Minimum Wage for Employees shall be an hourly rate of \$7.15. Beginning January 1, 2009, the Minimum Wage for Employees shall be an hourly rate of \$7.50. For employers who provide healthcare and/or childcare benefits to an employee during any pay period for which the employer pays an amount for those healthcare benefits equal to or in excess of an annualized cost of \$2500.00, beginning January 1, 2007, the Minimum Wage for that employee shall be an hourly rate of \$5.75, in addition to the healthcare benefits and/or childcare benefits, beginning January 1, 2008, the Minimum Wage for that employee shall be an hourly rate of \$6.15, in addition to the healthcare and/or childcare benefits, and beginning January 1, 2009, the Minimum Wage for that employee shall be an hourly rate of \$6.50, in addition to the healthcare and/or childcare benefits.

Section 4. NOTICE, POSTING AND RECORDS.

(A) Notice to Employees. Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works a notice published each year by the City Attorney informing Employees of the current Minimum Wage rates and of their rights under this ordinance. Every Employer shall post such notices in English and Spanish.

(B) Records. Employers shall maintain payroll records showing the hours worked daily by and the wages paid to all Employees. Employers shall retain payroll records pertaining to Employees for a period of three years. When the Employer uses tips to meet the Minimum Wage for an Employee, the Employer must have a Tip declaration signed by the Tipped Employee for each pay period.

Section 5. IMPLEMENTATION AND ENFORCEMENT.

(A) Rulemaking. The City shall have the authority to coordinate implementation and enforcement of this ordinance and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules

promulgated by the City shall have the force and effect of law and may be relied on by Employers, Employees, and other parties to determine their rights and responsibilities under this ordinance. Any such guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this ordinance, including supplementary procedures for helping to inform Employees of their rights under this ordinance and for monitoring Employer compliance with this ordinance.

(B) Civil Enforcement. Any Employee receiving less than the wage to which the Employee is entitled under this ordinance may bring a civil action in a court of competent jurisdiction and, upon prevailing, shall recover the balance of the wages owed, including interest thereon, and an additional amount equal to twice the wages owed, and any other appropriate legal or equitable relief. Any Employee who has suffered discrimination in any manner or had adverse action taken against that Employee in retaliation for exercising rights protected under this ordinance may bring a civil action in a court of competent jurisdiction and, upon prevailing, shall recover actual damages plus reinstatement in the case of discharge. In any case where an Employee has been discharged in retaliation for exercising rights under this ordinance, the period of violation extends from the day of discharge until the day the Employee is reinstated, the day the Employee agrees to waive reinstatement or, in the case of an Employee who may not be rehired, from the day of discharge until the day legal judgment is final. The requirements of this ordinance may also be enforced by the City Attorney. In such case, unpaid wages and actual damages recovered shall be payable to the individual Employee as to whom the violation occurred. A plaintiff prevailing in an action to enforce this ordinance shall be entitled to recover his or her costs and expenses of suit and reasonable attorney's fees.

Section 6. RELATIONSHIP TO OTHER REQUIREMENTS. This ordinance provides for payment of Minimum Wage rates and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation,

requirement, policy or standard that provides for payment of higher or supplemental wages, benefits, or protections. Nothing contained in this ordinance prohibits an Employer from paying more than the Minimum Wage rates established under this ordinance.

Section 7. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 8. COMPILATION. This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

Section 9. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.

X:\SHARE\Legislation\Seventeen\O-20fin.doc